Re Tan Sri Amin Shah bin Omar Shah; ex p Affin Bank Bhd

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NOTICE/PETITION NO D1–29–731 OF 2005
MOHD HISHAMUDIN J
15 AUGUST 2008

Bankruptcy — Creditor's petition — Application to strike out — Whether officer who signed creditor's petition and affidavit verifying petition had authority to sign and present same — Whether judgment creditor had failed to take steps towards reduction of debtor's indebtedness

The creditor had obtained judgment in the sum of RM3,222,477.89 against the debtor in a High Court civil suit. When the debtor failed to pay the judgment sum within the stipulated period, the creditor took out a creditor's petition ('the petition') under the Bankruptcy Rules 1969 ('the Rules'). The petition and the affidavit verifying the petition were signed by an officer of the creditor corporation. Thereafter the creditor filed a bankruptcy notice against the debtor for the outstanding judgment sum. The debtor filed an application to strike out the petition on the grounds that the officer who had signed the petition and the affidavit verifying the petition was not authorised by the creditor. The debtor in support relied on an alleged power of attorney granted to the officer and submitted that this power of attorney had not been adhered to strictly but had instead been 'tampered' with. The debtor further submitted that the judgment creditor had failed to take steps towards reduction of the debtor's indebtedness. When the application was dismissed by the registrar, who heard the application, the debtor proceeded by way of this appeal to the judge in chambers. This appeal again raised the two grounds that had already been raised before the registrar.

Held, dismissing the appeal with costs:

(1) The procedure for the presentation of a petition on behalf of the creditor corporation is provided for under r 215 of the Rules. It states, inter alia, that a petition may be presented by the corporation and signed by the officer on its behalf. In the instant case the petition stated that the person who signed the petition and the affidavit in support was an officer of the creditor corporation who had been authorised to sign the same. In addition, when the presentation was pursuant to this rule, the officer did not need to be armed with a power of attorney. Therefore

the debtor's submission as to the officer's absence of authority under the power of attorney could not stand, because the necessity of a power of attorney for these purposes was totally irrelevant. In addition, there was affidavit evidence to show that the officer derived his authority from the creditor company board of director's resolution, passed before the presentation of the petition, and which empowered the officer to represent the creditor corporation in any court proceedings and to sign, execute or affirm all documents, letters, notices, affidavits and petitions in respect of such proceedings. Thus, it was clear that the officer was duly authorised to bring the proceedings herein against the debtor (see paras 7–12).

(2) There was no merit in the debtor's second ground that the creditor failed to take any steps to realise the legal charges towards satisfaction or a reduction of the debtor's indebtedness, to strike out the petition. It is trite law that a charger or creditor is entitled in law to pursue any or all remedies to recover monies lent (see para 17).

[Bahasa Malaysia summary

Pemiutang telah memperolehi penghakiman berjumlah RM3,222,477.89 terhadap penghutang di dalam guaman sivil Mahkamah Tinggi. Apabila penghutang gagal membayar jumlah penghakiman di dalam tempoh yang ditetapkan, pemiutang memfailkan petisyen pemiutang ('petisyen tersebut') di bawah Kaedah-Kaedah Kebankrapan 1969 ('Kaedah-Kaedah'). Petisyen tersebut dan afidavit yang mengesahkan petisyen tersebut ditandatangani oleh pegawai perbadanan pemiutang. Pemiutang kemudiannya memfailkan notis kebankrapan terhadap penghutang untuk jumlah penghakiman yang belum dijelas. Penghutang memfailkan permohonan untuk membatalkan petisyen atas alasan bahawa pegawai yang menandatangani petisyen tersebut dan afidavit yang mengesahkan petisyen tersebut tidak diberi kuasa oleh pemiutang. Penghutang di dalam menyokong bergantung ke atas surat kuasa wakil yang didakwa diberikan kepada pegawai tersebut dan berhujah bahawa surat kuasa wakil ini tidak betul-betul dipatuhi tetapi sebaliknya diubah. Penghutang selanjutnya berhujah bahawa pemiutang penghakiman telah gagal untuk mengambil langkah terhadap pengurangan keterhutangan. Apabila permohonan tersebut ditolak oleh pendaftar yang mendengar permohonan tersebut, penghutang meneruskan dengan rayuan ini kepada hakim dalam kamar. Rayuan ini membangkitkan sekali lagi kedua-dua alasan yang telah dibangkitkan di hadapan pendaftar.

Diputuskan, menolak rayuan dengan kos:

(1) Prosedur untuk penyerahan petisyen bagi pihak perbadanan pemiutang

diperuntukkan di bawah k 215 Kaedah-Kaedah tersebut. Ia menyatakan, antara lain, bahawa petisyen boleh diserahkan oleh perbadanan dan ditandatangani oleh pegawai bagi pihaknya. Di dalam kes ini, petisyen menyatakan bahawa orang yang menandatangani petisyen dan afidavit yang menyokong adalah pegawai perbadanan pemiutang yang telah diberi kuasa untuk menandatanganinya. Selanjutnya, apabila penyerahan adalah berikutan kaedah ini, pegawai tersebut tidak perlu diberikan surat kuasa wakil. Oleh itu, hujahan penghutang terhadap ketiadaan kuasa pegawai di bawah surat kuasa wakil tidak boleh diterima kerana keperluan surat kuasa wakil untuk tujuan-tujuan ini secara keseluruhannya tidak relevan. Selanjutnya, terdapat keterangan afidavit untuk menunjukkan bahawa pegawai tersebut mendapat kuasa daripada resolusi lembaga pengarah syarikat pemiutang, diluluskan sebelum penyerahan petisyen tersebut, yang memberi kuasa kepada pegawai tersebut untuk mewakili perbadanan pemiutang di dalam mana-mana prosiding mahkamah dan untuk menandatangani, melaksanakan atau mengesahkan kesemua dokumen, surat, notis, afidavit dan petisyen berkaitan prosiding sedemikian. Oleh itu, adalah jelas bahawa pegawai tersebut diberi kuasa untuk membawa prosiding ini terhadap penghutang (lihat perenggan 7–12).

(2) Tiada merit di dalam alasan kedua penghutang bahawa pemiutang gagal untuk mengambil apa-apa langkah untuk realisasikan caj-caj undang-undang terhadap penyelesaian atau pengurangan keterhutangan pemiutang, untuk membatalkan petisyen tersebut. Adalah undang-undang nyata bahawa penggadai atau pemiutang adalah berhak di dalam undang-undang untuk mengejar apa-apa atau kesemua remedi untuk mendapatkan balik wang yang dipinjamkan (lihat perenggan 17).]

Notes

For cases on application to strike out, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2374–2378.

Cases referred to

Bank Bumiputra Malaysia Bhd v Esah binti Abdul Ghani [1986] 1 MLJ 16 (refd)
Ho Fok v Ann Bee (M) Sdn Bhd [2002] 5 MLJ 331 (refd)
Kang Chong Yeow; Ex P Mivan Far East Sdn Bhd, Re [2001] 3 MLJ 98 (refd)
Low Lee Lian v Ban Hin Lee Bank Bhd [1997] 1 MLJ 77 (refd)

Legislation referred to

Bankruptcy Rules 1969 r 215

G Gowri (Thanggaya Khoo & Co) for the debtor.
SL Goh (Shook Lin & Bok) for the creditor.

Mohd Hishamudin J:

[1] Enclosure 64 is an appeal to judge in chambers by the debtor against the decision of the learned senior assistant registrar of 9 October 2007 dismissing the application by the debtor in encl 51. The application was made by the debtor to stay the proceeding and/or to strike out the creditor's bankruptcy petition which was issued against the debtor.

[2] I had dismissed the appeal on 9 July 2008 with costs, and I now give the grounds for my decision.

[3] On 9 March 2005 the creditor filed a bankruptcy notice against the debtor demanding payment of a sum of RM3,222,477.89 which was due to the creditor under a judgment obtained by the creditor in a Kuala Lumpur High Court (Commercial Division) civil suit in case No: D3-22–90 of 2003 on 9 December 2003. Since the debtor failed to pay within the stipulated period, the creditor took out a creditor's petition on 3 March 2006. The petition was signed by an officer of the creditor corporation, namely, one Encik Mohamed Aslam Khan bin Gulam Hassan, the senior vice president of the creditor corporation. He also signed the affidavit verifying the petition. In view of one of the issues raised by the debtor, I reproduce below the relevant part of the creditor's petition (encl 26) and the affidavit verifying the petition (encl 27).

CREDITOR'S PETITION

We, Affin Bank Berhad of 7th Floor, Menara Affin, 80, Jalan Raja Chulan, 50200 Kuala Lumpur by Mohamad Aslam Khan bin Ghulam Hassan, a senior vice president, Special Asset Management for the Judgment creditor and duly authorized to sign and present this petition on behalf of Affin Bank Berhad, hereby petition that...

Dated this 3 Mar 2006

Signed by the Judgment Creditor in my presence:	Affin Bank Berhad
(Signed)	(Signed)
LAU KEE SERN	MOHAMAD ASLAM KHAN BIN GHULAM HASSAN
(Signature of Witness)	Senior Vice President,
Advocate & Solicitor	Special Asset Management

AFFIDAVIT OF TRUTH OF STATEMENT IN PETITION

I, MOHAMAD ASLAM KHAN BIN GHULAM HASSAN (NRIC No. 500805-10-5143) a Malaysian citizen of full age and in the employment of Affin Bank Berhad 7th Floor, Menara Affin, 80, Jalan Raja Chulan, 50200 Kuala Lumpur, a senior vice president, Special Asset Management for the Judgment Creditor named in the petition hereto annexed, affirm and say as follows:

1. That I am duly authorized by the Judgment Creditor to make this affidavit on its behalf.

2. That the several statements in the said petition are within my own knowledge true.

To an affidavit by one deponent]
named MOHAMAD ASLAM KHAN] (signed)
BIN GHULAM HASSAN affirmed on]
03-03-2006 at Kuala Lumpur]

Before me,
(signed)
Commissioner for Oaths
Kuala Lumpur

[4] Before the senior assistant registrar ('the registrar'), the debtor filed a summons in chambers (encl 51) to strike out the creditor's petition based on the following grounds:

(1) that the officer who had signed the creditor's petition and the affidavit verifying petition was not authorised by the creditor; and

(2) that the judgment creditor failed to take any step to realise the legal charges which was in the form of landed properties worth RM3m towards satisfaction or reduction of the debtor's indebtedness.

[5] The application was dismissed by the learned registrar and the debtor appealed to the judge in chambers.

[6] I shall now deal with the first ground. Learned counsel for the debtor in his written submission submits that the officer, Mohamad Aslam, who signed the petition did not have the authority to sign and to present the same on behalf of the creditor. The reason put forward by counsel for the debtor for the absence of authority on the part of the officer is that Encik Aslam had not adhered strictly to the power of attorney issued to him by the creditor and that in any event the power of attorney had been 'tampered' with. Counsel's argument on the point pertaining to the power of attorney is detail and lengthy. However, I do not in this judgment propose to go into the details of

counsel's argument as I am of the view, that in the light of the fact that the petition itself does not state that the signing and presentation of the petition by the officer was pursuant to any power of authority, such an argument is irrelevant.

[7] The procedure for the presentation of a petition on behalf of a corporation is provided for under r 215 of the Bankruptcy Rules 1969. It states, inter alia, that a petition may be presented by the corporation and signed by the officer on its behalf. The provision reads:

> 215 Officer of corporation, etc
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> Where a corporation presents a petition or takes any other action under this Act, the officer of the corporation may act in his own name, stating that he is such officer duly authorized under seal; *but a petition may be presented by the corporation, and signed by the officer on its behalf*. Any person chosen by the corporation to act for it as agent, is an 'officer' within section 133 and if duly authorised under seal can act for the corporation.
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> (Emphasis added.)

[8] Now, upon examining the manner the petition is presented, the presentation of the petition in the present case is clearly pursuant to the second (alternative) limb as provided for by the above r 215, that is to say, pursuant to that part of the provision that stipulates:

> … a petition may be presented by the corporation, and signed by the officer on its behalf …

[9] This means that the petition is presented by the corporation (that is the company, Affin Bank Bhd) and is signed by a duly authorised officer of the company. That officer, as I have mentioned earlier, is Mohamad Aslam Khan bin Ghulam Hassan, a senior vice president, Special Asset Management, of the bank/corporation (the creditor). It is significant to note that the petition states that he is an officer of the creditor company and that he has been authorised to sign and to present the petition on behalf of the creditor company. And the petition bears his signature.

[10] When the presentation is pursuant to the second (alternative) limb of r 215, the officer signing does not need to be armed with a power of attorney. All that he is required to have is the authority to sign and to present the petition; and in the petition and verifying affidavit he must state that he is an officer of the company/creditor and that as an officer he is duly authorised by the company to sign and to present the petition on behalf of the company. Since in the present case the signing and presentation of the petition was by an authorised officer of the creditor pursuant to r 215, therefore, the

A argument of the debtor's counsel pertaining to the power of attorney issued to the officer Mohamad Aslam, even if a power of attorney had been issued to him, is totally irrelevant.

B **[11]** Since Encik Aslam's authority is being challenged by the debtor, I must add here that there is affidavit evidence to show that Encik Aslam derived his authority from the creditor company board of directors' resolution dated 27 February 2006. By this resolution, Encik Aslam was empowered to represent the creditor in any court proceedings to sign, execute or affirm all documents, letters, notices, affidavits, petitions, in respect of, or C in relation to, or in connection with or rising from such court proceedings, for and on behalf of the creditor. This resolution was passed before the presentation of the creditor's petition.

D **[12]** Therefore, I found that there is no merit in the contention that the officer Mohamad Aslam Khan bin Ghulam Hassan was not authorised to sign the creditor's petition and the affidavit verifying the petition. It is clear from the creditor's petition that it was signed and presented on behalf of the creditor by Encik Aslam who was duly authorised to bring the proceedings herein against the debtor. E

[13] In arriving at the above decision, I am guided by the following cases, namely:

F (a) *Re Kang Chong Yeow; Ex P Mivan Far East Sdn Bhd* [2001] 3 MLJ 98; and

(b) *Ho Fok v Ann Bee (M) Sdn Bhd* [2002] 5 MLJ 331.

[14] In *Re Kang Chong Yeow*, Abdul Wahab Patail J ruled:

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> It is clear from the first part of r 215 that where a corporation presents a petition or takes any other action under this Act, it may do so firstly by an officer of the corporation acting in his own name, in which case he has to state that he is such officer duly authorised under seal; and secondly a petition may also be presented by the corporation and signed by an officer of the corporation on its behalf. The H next part of the rule applies to a third method of presenting a petition, that is by an agent, who is not an officer of the corporation in the ordinary course, but is deemed to be an officer for the purpose of presenting a petition; and since such agent is an independent entity outside the corporation, he would need to be duly authorised under seal before he can present a petition for the corporation.
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> I The proceeding in this case, however, is clearly taken under the second alternative, that is, by the company Mivan Far East Sdn Bhd. The affidavits deposed by James Martin Laughlin states clearly that he is the executive director of the judgment creditor (respondent) and that he has been authorised to make the affidavit on behalf of the respondent. Nothing in this proceeding shows that it is being

undertaken by James Martin Laughlin himself on behalf of Mivan Far East Sdn Bhd. In the circumstances, the objection under r 215 is unsustainable on the facts. Since no authorisation under seal is necessary in this case, it is unnecessary to refer to exh JML-1 in encl 67 and therefore the objection under O 54 r 1(3A) of the RHC does not arise.

[15] In *Ho Fok*, Kang Hwee Gee J said:

As in *Re Kang Chow Yeow*, the petition in the instant case was signed by a director of the JC, Mr Lee Neh @ Lee Pins Ten. It therefore falls squarely within that limb of r 215 that allows a petition to be 'presented by the corporation, and signed by the officer on its behalf'. It does not therefore require the person to state that he had been authorised under seal.

[16] I will now deal with the debtor's second ground. Here the debtor relies on the alleged failure on the part of the creditor to take any step to realise the legal charges which was in the form of landed properties worth RM3m towards satisfaction or reduction of the debtor's indebtedness, as a ground to strike out the creditor's petition.

[17] There is no merit in this argument as well. It is trite law that a chargor or creditor is entitled in law to pursue any or all remedies to recover monies lent. Gopal Sri Ram JCA, in delivering the judgment of the Federal Court in *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77, has this to say:

Now, it is trite that a chargee/creditor may pursue any or all remedies to recover monies lent by him. He may enforce his statutory charge against the charger by way of proceedings in rem under s 256 of the Code. He may sue the principal debtor (who may or may not be the chargor) upon the personal covenant contained in any loan agreement that was entered into between the parties. He may proceed against the surety who has guaranteed the loan. And he may pursue all of these courses simultaneously, contemporaneously or successively. See *China and South Sea Bank Ltd v Tan* [1989] 3 All ER 839 at p 842.

[18] In the Supreme Court case of *Bank Bumiputra Malaysia Bhd v Esah binti Abdul Ghani* [1986] 1 MLJ 16 it was held that the court had no jurisdiction either to dismiss or stay the creditor's petition on the ground that the bank did not proceed with the foreclosure proceedings.

Appeal dismissed with costs.

Reported by K Nesan